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To: San Diego City Council
From: Ray Lutz, Citizens Oversight
Re: ITEM 53 regarding Election Integrity

San Diego City has an Agenda Item #53 which is generally on election procedures. We hereby pull that agenda item for public comment.

The County of San Diego has the responsibility of appropriately processing elections which include the residents of San Diego City. Therefore, it is your responsibility as the City of San Diego to provide guidelines and expectations to the County. Your input to the County can be a resolution providing minimum processing guidelines as discussed below.

San Diego County has an important responsibility to hold clean elections. We believe the County of San Diego can do a better job in this regard, as follows:

1. Perform Complete Audits.

Years ago, almost all voters voted in-person at polling places on election day. Election officials were expected to perform the "1% Manual Tally Audit" where 1% of the precincts are manually tallied and compared with the computer report. After about the turn of the century, voting by mail (VBM) became much more popular, and in 2006, Senator Debra Bowen championed changes to the election code so that those VBM ballots are also included in the manual tally. In fact, in the legislative history, the desire was clearly stated by Bowen that all ballots should be included in the selection process where 1% of the precincts (or batches) are selected for manual tallying. Today, more than 65% of ballots are by mail.

After those revisions, Election code 15360 sets out the manner by which the 1% Manual Tally audit would be performed, and it **now includes the VBM ballots**. It states quite clearly that:

> 15360 (a) During the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices, **including vote by mail ballots**, using either of the following methods:
>
> (1)(A) A public manual tally of the ballots canvassed in the semifinal official canvass, **including vote by mail ballots** but not including provisional ballots, cast in 1 percent of the precincts chosen at random by the elections official.   If 1 percent of the precincts is less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official.
> ...

Normally, when you take a percentage of something, like 1%, it is 1% of all of it, not 1% of only a part.

In the 2016 primary, the San Diego County Registrar of Voters Micheal Vu included only about half of the VBM ballots in the audit, leaving out about 285,000 ballots. Leaving out the final half of the VBM ballots is like the IRS telling a firm it will choose 1% of the transactions of the year to audit, but will not choose any after August 15. Any fraudster would then know which transactions are safe to modify.

We asked Vu to include additional ballots in the audit process to cover the "later" VBM batches. The number of batches that would need to be manually tallied was eight. The average time for auditing a batch of 400 ballots in that election was about four hours with three workers plus supervisor. Assuming $25 per hour rate of pay for such temporary workers, it costs about $400 to manually tally one batch, and thus about $3200 to audit all of them. Vu refused.

Had Vu complied with the law, no lawsuit would have resulted and the cost would have been minimal.

Instead of cooperating with our simple request, Vu decided it would be better to go to court. So we went all the way through the three-day trial, including many hours of work by Vu and his staff. All told, the County probably spent hundreds of thousands of dollars just to defend its position only to lose, with the court ruling what is only logical. **All (or nearly all) VBM ballots must be included in the audit.**

Then, to make it worse, Vu and the County went on to appeal the judgment. They would have lost the appeal as well except for one more disgusting sleight of hand used by Vu and his friends in CACEO, the California Association of Clerks and Election Officials. There was a bill in process in the legislature in 2017, AB-840, which was originally about signatures on VBM envelopes which had no opposition. This bill was revised in August, long after all hearings have been held, to make it legal for Vu and other election officials in the state to continue to omit all those "later" VBM ballots. That bill was pushed through with no one really noticing except that one election official who informed us about it. Dozens of letters were received against the bill but the analyst still reported that no opposition was received. In the end, it was signed into law, and then the appellate court ruled that the case was moot and reversed the lower court decision and denied attorney fees.

The County, by including a change in the law, won the case in court. But still lost a great deal of money and ***still is doing the wrong thing.*** <u>Leaving out ballots of an already minimal auditing process is not the right thing to do.</u> The public appropriately is questioning the integrity of our elections process and this only makes it worse.

So now, with this change in the election code, election officials can short-cut the audit process if they want to. But many officials in other counties (Orange County, San Francisco, and others) still DO include all VBM ballots in the audit, because they know it is the right thing to do from a statistical sampling standpoint.

--> Therefore, we ask that the City of San Diego establish a policy that all VBM ballots will be included in the 1% manual tally audit and any other audit process that the county may use. (This should be part of Item 53 or another item if it seems a better way to process it.)

2. BAN Modifying Ballots using White-out without any logging, reporting, or two-sets-of-eyes

Ballots are not supposed to be modified:

> ARTICLE 4. Corruption of Voting, Section 18568
>
> Every person is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years, or by both that fine and imprisonment, who:
> (a) Aids in **changing or destroying any poll list or official ballot.**
> ...

Vu routinely modifies ballots using white out and has admitted this under oath. This may be a legitimate procedure IF indeed the vote on the ballot is not modified and the practice is used only so the ballots can be correctly scanned. However, we have no way of knowing how widespread whiteouts are being used, nor whether it is appropriate, because there is no logging nor reporting. We also notice that workers do this with only one person doing it and no one witnessing and agreeing that the actions are appropriate.

Ballots should not be modified in this manner, but if it is done, then it should be logged, reports should be produced, and two-sets-of-eyes should be involved in the process.

--> The City of San Diego should inform the county that they should ban white-outs on ballots.

3. New Equipment

The State of California has set aside $134 million in matching funds to assist the counties in upgrading their equipment. We believe the equipment used in San Diego has been de-certified by Secretary of State Alex Padilla. This means we have the opportunity to improve the situation in San Diego. This will eliminate the need for white-outs and should enable improved audits.

--> New equipment should be purchased that can generate high-resolution **digital images** of **hand-marked paper ballots** and use these to determine voter intent, and then archive the ballot images so the election can be confirmed by any interested party. The City of San Diego should so resolve and inform the County of their position.

4. Risk Limiting Audits

Robust Risk Limiting audits should be used in the future which will randomly sample from ALL ballots and escalate to include more ballots if sufficient evidence is found that the election might have too many errors or have been fraudulently "hacked" or modified.

As an engineer, I have been involved in the review, refinement, and implementation of risk limiting audits with top researchers in the field, including Professor Philip Stark of Berkeley Mathematics and Statistics Department (and who testified at our trial on our behalf) and Ron Rivest at MIT (originator of many of the cybersecurity secure hash algorithms and public-key cryptosystems). I believe I can be helpful as we move to include these methods in San Diego so that the public can be confident that the

results are trustworthy.

--> The City of San Diego should resolve and inform the County that new equipment should be procured and should provide sufficient tracking to perform ballot comparison risk limiting audits.

5. Improve Community Involvement and Communication

Election Code 2300, the "Voters Bill of Rights" includes section 9, which provides that voters can ask questions and get answers. However, the San Diego Registrar routinely ignores our questions. We believe that with improved community involvement and communications can help avoid lawsuits and will result in a much better operation of the Registrar of Voters.

--> The County should establish an Election Integrity panel which will involve the public in decision-making and conduct regular meetings to provide a venue for asking and answering questions. We suggest that the City of San Diego should so resolve and should cooperate with the County in providing needed public involvement in our elections procedures to bolster public confidence in our elections process.
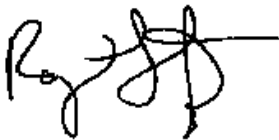
6. Make the Registrar of Voters an elected position.

We believe the County should reorganize tso as to make the Registrar of Voters an elected position so the Registrar could be easily removed by the voters. We believe that Michael Vu has demonstrated poor decision-making in his tenure in this position and should be removed and replaced.

--> The City of San Diego should resolve to inform the County that they should modify the structure of the County so that the Registrar of Voters is an elected position.

Elections are the heart of our democracy. If we do not get this right, then all other initiatives may be futile. Therefore, we request that the City of San Diego take this issue seriously and help the public to have better processing of elections in San Diego than we have witnessed in recent elections.

Sincerely,

Raymond Lutz
Executive Director, Citizens' Oversight Projects